

DUPLICATE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)

Petition for Forbearance From E911 Accuracy)

Standards Imposed On Tier III Carriers For)

Locating Wireless Subscribers Under Rule Section)

20.18(h))

WT Docket No. 02-377

ORDER

Adopted: November 18, 2003

Released: November 19, 2003

By the Commission:

I. INTRODUCTION

1. In this Order, we deny a pending petition filed by a coalition of twelve small Commercial Mobile Wireless Service (CMRS) carriers listed at Appendix A (hereinafter, the Tier III Coalition or Petitioner) requesting forbearance of certain Enhanced 911 (E911) Phase II requirements.¹ The Tier III Coalition specifically petitions the Commission under section 10(c) of the Act to forbear from enforcing against small, non-nationwide carriers (referred to as "Tier III" carriers) the Phase II accuracy standards set forth in section 20.18(h) of the Commission's rules² until January 1, 2006.³ These standards define the accuracy with which a CMRS carrier must identify the location of a customer making a wireless 911 call.⁴ We find, in light of the vital public safety benefits of accurate E911 service, that the Tier III Coalition has not offered adequate evidence to support the broad, class-wide relief that it requests.⁵ In

¹ Petition Pursuant to 47 U.S.C. § 160(c) for Forbearance from E911 Accuracy Standards Imposed on Tier III Carriers for Locating Wireless Subscribers under Rule Section 20.18(h), WT Docket No. 02-377 (filed Nov. 20, 2002) (Forbearance Petition). The members of the Tier III Coalition are listed at Appendix A.

² 47 C.F.R. § 20.18(h).

³ See Forbearance Petition at i. Tier III carriers are defined as non-nationwide CMRS providers with no more than 500,000 subscribers on December 31, 2001. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers*, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841, 14847-48, paras. 22-23 (2002) (*Non-Nationwide Carriers Order*).

⁴ 47 C.F.R. § 20.18(h) provides that CMRS licensees must comply with specified standards for Phase II location accuracy and reliability: for network-based technologies, within 100 meters for 67 percent of calls, within 300 meters for 95 percent of calls; and for handset-based technologies, 50 meters for 67 percent of calls, 150 meters for 95 percent of calls.

⁵ Section 10(c) of the Act provides that "[a]ny telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers." 47 U.S.C. § 160(c). Because we find that the relief sought is overbroad and does not satisfy the statutory requirements for forbearance, whether applied to the entire class of Tier III carriers or to the Tier III Coalition of which the Petitioner is comprised, we assume, without deciding, that the Tier III Coalition has standing to petition on behalf of the entire class of Tier III carriers. We therefore leave for another day the question whether the statute requires that suit be brought by a membership organization with authority to represent the entire affected class, or whether, in the absence of such an organization, all who seek relief must join in the petition. Moreover, because the Tier III

(continued....)

particular, Petitioner cannot prevail unless its evidence satisfies all three conditions warranting forbearance from enforcement of the accuracy standards.⁶ We find that section 10(a) of the Act prohibits us from granting the instant petition. Petitioner has failed to demonstrate that it complies with the second or third conditions necessary for forbearance. Specifically, with respect to the second condition, Petitioner has failed to show that the accuracy standards are unnecessary for the protection of consumers of Tier III carriers. Concerning the third condition, Petitioner has failed to demonstrate that forbearance from enforcement against Tier III carriers is consistent with the public interest conditions for forbearance. We therefore need not and do not address the first condition necessary for forbearance.⁷ Accordingly, we deny the Tier III Coalition's petition for forbearance.

2. We recognize that there may be compelling circumstances justifying particularized relief from strict compliance with the accuracy standards throughout some portion of a carrier's service area.⁸ To strike the proper balance between a need for particular relief and the countervailing public interest benefits of full deployment of E911 wireless services, our previous Orders have made clear that carriers should seek only the narrowest relief necessary. Moreover, carriers should support their requests with specific evidence demonstrating the extent of the relief necessary and showing a path to full compliance. Such evidence is necessary to ensure that the Commission provides appropriate relief, tailored to the particular circumstances of the individual carrier. This, in turn, will promote the rapid and efficient deployment of E911 throughout all areas of the country in furtherance of the public interest.

II. BACKGROUND

A. E911 Phase II Requirements

3. Under Phase II of the Commission's wireless E911 rules, wireless carriers are required to provide the location of wireless 911 callers, a capability known as Automatic Location Identification (ALI), with a specified degree of accuracy and reliability.⁹ In establishing its E911 rules, the Commission sought to be technologically and competitively neutral, allowing any location technology to be used that can comply with specified accuracy, reliability, and deployment schedule requirements. The rules require that handset-based location solutions must provide the location of wireless 911 calls with an accuracy of 50 meters for 67 percent of calls and 150 meters for 95 percent of calls.¹⁰ Carriers using a handset-based

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Coalition only requests and argues for relief on behalf of the entire Tier III class, we need not and do not determine whether any individual Tier III carriers would meet the forbearance criteria. *See also infra*, note 50.

⁶ Section 10(a) of the Communications Act of 1934, as amended (the Act), provides that the Commission must forbear from applying any regulation or provision of the Act to a telecommunications carrier if the Commission determines that: (1) enforcement of such regulation is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; *and* (3) forbearance from applying such provision or regulation is consistent with the public interest. 47 U.S.C. § 160(a) (emphasis added).

⁷ *See Cellular Telecommunications & Internet Association v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (CTIA).

⁸ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order to Stay, FCC 03-241, para. 17 (rel. October 10, 2003) (*Order to Stay*) ("There is evidence suggesting that under certain conditions, small carriers may face extraordinary circumstances in timely meeting one or more of the deadlines for Phase II deployment and that relief may therefore be warranted.").

⁹ *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996) (*E911 First Report and Order*). For additional information regarding the Commission's wireless E911 program, see <www.fcc.gov/911/enhanced>.

¹⁰ 47 C.F.R. § 20.18(h)(2).

solution also must ensure that 95 percent of their customers have location-capable handsets no later than December 31, 2005.¹¹ For carriers choosing a network-based solution, the rules provide that the technology must report the location of wireless 911 calls with an accuracy of 100 meters for 67 percent of calls and 300 meters for 95 percent of calls.¹² A carrier using a network-based solution must provide ALI to 50 percent of its coverage area, or 50 percent of its population, beginning on October 1, 2001 or within 6 months of a Public Safety Answering Point (PSAP) request, whichever is later, and to 100 percent of callers within 18 months of that request or by October 1, 2002, whichever is later.¹³ Wireless carriers subject to the rules were directed to report their Phase II plans, including the technologies they plan to use, by November 9, 2000.¹⁴

B. Non-Nationwide Carriers Order

4. On July 26, 2002, the Commission granted a temporary stay of the application of certain specific Phase II implementation deadlines set forth in sections 20.18(f) and 20.18(g) of the rules¹⁵ for certain mid-sized (Tier II) and small (Tier III) carriers that had filed requests for temporary relief.¹⁶ The Commission found, among other things, that manufacturers of the equipment necessary for E911 implementation were satisfying the demands of large carriers first, and that delays in the implementation of E911 by these large carriers had caused "downstream delays" in the provision of E911 equipment to the smaller carriers.¹⁷ To account for these delays, the Commission provided temporary extensions of the deadlines for implementation and provision of E911 service.¹⁸

5. Specifically, Tier III carriers that filed requests for an extension of the Phase II deadlines were granted the following relief:

The Tier III licensees that employ a network-based location technology must provide Phase II 911 enhanced service to at least 50 percent of the PSAP's coverage area or population beginning September 1, 2003 or within 6 months of a PSAP request, whichever is later; and to 100 percent of the PSAP's coverage area or population by September 1, 2004 or within 18 months of such a request, whichever is later.¹⁹

The Tier III licensees who employ a handset-based location technology, without respect to any PSAP request for deployment of Phase II E911, must begin selling and activating location-capable handsets no later than September 1, 2003; ensure that at least 25 percent of all new

¹¹ 47 C.F.R. § 20.18(g).

¹² 47 C.F.R. § 20.18(h)(1).

¹³ Currently, most carriers have a waiver of these deadlines. On October 1, 2001, the Commission adopted orders approving, in part, individual compliance plans for five of the six nationwide CMRS carriers, and modified the deadlines for small and mid-sized carriers in the *Non-Nationwide Carriers Order*. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14843, para. 8.

¹⁴ 47 C.F.R. § 20.18(i). See <www.fcc.gov/911/enhanced>, Wireless E-911 Phase II Automatic Location Identification Implementation, Reports From Wireless Carriers.

¹⁵ 47 C.F.R. §§ 20.18(f)-(g).

¹⁶ See, generally, *Non-Nationwide Carriers Order*. Tier II carriers are defined to include CMRS carriers that had over 500,000 subscribers as of the end of 2001. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14847, para. 22.

¹⁷ See *id.* at 14844, paras. 11-12.

¹⁸ See *id.* at 14844, para. 10.

¹⁹ See *id.* at 14851, para. 32.

handsets activated are location-capable no later than November 30, 2003; ensure that at least 50 percent of all new handsets are location-capable no later than May 31, 2004; ensure that 100 percent of all new digital handsets activated are location-capable no later than November 30, 2004; and ensure that penetration of location-capable handsets among its subscribers reaches 95 percent no later than December 31, 2005. Once a PSAP request is received, the licensee must, in the area served by the PSAP, within six months or by September 1, 2003, whichever is later, install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, to enable the provision of Phase II E911 service; and begin delivering Phase II E911 service to the PSAP.²⁰

Extensions were granted only to those Tier III carriers that filed requests for such relief. In addition, the Commission denied waiver requests from carriers seeking a relaxation of the accuracy standards.²¹ The Commission found that it was premature to determine whether carriers would still need relief from the accuracy standards at the end of the extended period to implement E911.²²

C. Tier III Coalition Petition for Forbearance and Comments

6. On November 20, 2002, the Tier III Coalition filed the pending petition under section 10(c) of the Act requesting a forbearance of the E911 accuracy standards for Tier III carriers until January 1, 2006.²³ In its petition, the Tier III Coalition argues that there is no commercially available Phase II compliant handset or network location solution capable of meeting the accuracy requirements that can be economically deployed throughout a licensed rural service area.²⁴ Petitioner asserts, for example, that, because rural carriers typically locate cell sites farther apart than carriers in urban areas, and often situate sites in a linear or "string-of-pearls" fashion, rural carriers using a network-based Phase II solution would have to construct new base-stations and other network elements at a prohibitive cost, which may lead carriers to terminate service to those areas.²⁵ Moreover, the Petitioner argues that there is no support in the rulemaking record for imposing the same quantitative accuracy requirements in rural and urban settings.²⁶ It maintains that a 911 caller can be located more quickly in a rural area than in urban settings.²⁷ In sum, the Tier III Coalition argues that imposing the accuracy requirements on rural carriers is both unnecessary and infeasible. The Tier III Coalition therefore seeks forbearance from the accuracy requirements up to and including December 31, 2005. The Petitioner suggests that, during this forbearance period, the Commission can develop a record regarding the degree of accuracy actually required in a rural setting, while rural carriers and vendors work on economical solutions to the provision of Phase II location technology at acceptable accuracy standards.²⁸

7. Under the Petitioner's proposal, during this period of forbearance, the level of accuracy achieved by Tier III carriers throughout their service areas would be deemed compliant if carriers fully deployed either a network or handset solution using existing network facilities. Thus, the Petitioner proposes that during this period of limited forbearance, Tier III carriers that implement a Phase II

²⁰ See *id.* at 14851, para. 33.

²¹ See *id.* at 14853, paras. 40-41.

²² See *id.* at 14853, para. 41.

²³ Forbearance Petition at i; 47 U.S.C. § 160(c).

²⁴ *Id.* at i.

²⁵ *Id.* at 15, 19, 42.

²⁶ *Id.* at i.

²⁷ *Id.* at 9.

²⁸ *Id.* at ii, 36-37.

network-based solution using all existing transmitting facilities and existing cell site antenna configurations, without adding any further enhancements such as AOA antennae, will be deemed compliant with accuracy requirements.²⁹ Similarly, it proposes that carriers that have chosen to deploy a handset solution and that have compatible ALI-capable handsets available would be deemed compliant if they deploy the handset solution throughout their service area without any network enhancements to assist in obtaining location information.³⁰

8. The Forbearance Petition was put out for public comment on December 17, 2002.³¹ Several parties, listed at Appendix B, submitted comments, mostly rural carriers or representatives of rural carriers, largely in support of the petition and its arguments and assertions. Three public safety organizations, the National Emergency Number Association (NENA), the Association of Public Safety Communications Officials-International, Inc. (APCO), and the National Association of State Nine One One Administrators (NASNA) (collectively Public Safety Organizations), filed a joint comment opposing the petition.³² The Public Safety Organizations argue that the requested relief was overbroad in seeking forbearance on behalf of all Tier III carriers without regard to the urban or rural nature of their service, and that the petition does not define "rural" in any case.³³ The Public Safety Organizations further assert that the need for accuracy cannot be generalized on the basis of the urban or rural nature of the locality, and that both environments can present circumstances requiring the need for greater accuracy.³⁴ They emphasize that any relief granted should apply only to a group of beneficiaries matched to and supported by the record.³⁵ Further, they argue that the Petition does not create any incentive to reach the section 20.18(h) accuracy standards, because it contemplates that the period of forbearance would be used to determine what level of accuracy was appropriate rather than how to reach the level established in the Commission's rules.³⁶ On the Petitioner's contention that there was no economically viable solution currently available to rural carriers, the Public Safety Organizations state that continuing improvements in the technology would partly solve this problem and that adjacent rural carriers could work in cooperation to further alleviate cost difficulties.³⁷ The Public Safety Organizations conclude that waivers for individual carriers, granted on a case-by-case approach rather than through a blanket relaxation of accuracy standards, are the appropriate vehicle for providing relief in meritorious cases.³⁸

9. In its reply comments, the Tier III Coalition argues that the relief requested would, in practice, only apply to rural carriers, because urban carriers, with their more closely-spaced cell sites, would be able to meet the Commission's accuracy standards relying solely on their existing network.³⁹

²⁹ *Id.* at i-ii.

³⁰ *Id.* at i-ii, 27.

³¹ Public Notice, "Wireless Telecommunications Bureau Seeks Public Comment on Petition for Forbearance From E911 Accuracy Standards Imposed On Tier III Carriers," WT Docket No. 02-377, 17 FCC Rcd 25179 (rel. December 17, 2002). A list of commenters is included at Appendix B.

³² See, generally, Public Safety Organizations Comments. Opposition was also filed by On-Board Communications (stating that other methods should be tried to provide location information before granting forbearance). See On-Board Comments at 1.

³³ Public Safety Organizations Comments at 2-3.

³⁴ *Id.* at 4.

³⁵ *Id.* at 3.

³⁶ *Id.* at 5.

³⁷ *Id.* at 5-7.

³⁸ *Id.* at 7.

³⁹ Tier III Coalition Reply Comments at 11-12.

The Tier III Coalition again avers that requiring small carriers to attempt to meet accuracy standards by network buildout would not contribute to public safety because the cost of compliance might lead carriers to terminate rural service in unaffordable areas or decline to extend service into those areas.⁴⁰

D. Order to Stay

10. On October 10, 2003, the Commission issued an order temporarily staying certain E911 requirements for Tier III carriers with pending petitions for relief from those requirements (*Order to Stay*).⁴¹ These petitions included both the instant Forbearance Petition and a number of waiver petitions, some filed by members of the Tier III Coalition.⁴² To each waiver petitioner, the Commission granted a stay of the requirement at issue from September 1, 2003 to six months from the release date of the *Order to Stay*, or until the date the relevant petition was decided, whichever was sooner.⁴³ Similarly, the Commission stayed the application of the accuracy requirements to the Tier III Coalition for six months or until the date the Forbearance Petition was decided, whichever is sooner.⁴⁴

III. DISCUSSION

11. Section 10(a) of the Act provides that the Commission must forbear from applying any regulation or provision of the Act to a telecommunications carrier if the Commission determines that

- (1) enforcement of such regulation is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.⁴⁵

In the context of prongs one and two, a requirement is “necessary” if there is a strong connection between the requirement and the desired regulatory goal.⁴⁶

12. Forbearance is warranted only if all three prongs of the test are satisfied.⁴⁷ Thus, if the evidence in the record before the Commission does not establish that all three conditions for forbearance are satisfied, a petition for forbearance must be denied.⁴⁸ Further, the court in *CTIA* has held that, in determining whether the evidence is sufficient, the Commission operates under the traditionally deferential “arbitrary and capricious” standard, and need only examine the relevant data and articulate a

⁴⁰ *Id.* at 14.

⁴¹ *See, generally, Order to Stay.*

⁴² *Id.* at para. 1.

⁴³ *Id.* at para. 3.

⁴⁴ *Id.*

⁴⁵ 47 U.S.C. § 160(a).

⁴⁶ *See CTIA*, 330 F.3d at 512 (D.C. Cir. 2003).

⁴⁷ *See CTIA*, 330 F.3d at 509.

⁴⁸ *See id.* at 512.

satisfactory explanation for its action, including a rational connection between the facts found and the choice made.⁴⁹ The Commission's interpretations of the terms of section 10 are also entitled to deference if reasonable and not otherwise arbitrary, capricious, or manifestly contrary to the statute.⁵⁰ Therefore, as a general matter, we find, based on the guidance of the court in *CTIA*, that a petition for forbearance is resolved under the usual standards for agency adjudication.

13. Because the Coalition's petition seeks forbearance on behalf of the class of Tier III carriers, we determine whether the forbearance criteria are satisfied for this class.⁵¹ For the reasons set forth below, we find on the record before us that the Phase II accuracy standards are necessary to protect customers of Tier III carriers. We further find that forbearance from enforcement against the Tier III class would not be consistent with the public interest.⁵² We therefore conclude that the pending petition fails the second and third conditions for forbearance and must be denied.

A. Consumer Protection

14. The second prong of the section 10(a) forbearance test requires that we determine whether enforcement of the accuracy standards is unnecessary for the protection of consumers. As noted above, in this context, a requirement is "necessary" for the protection of consumers if there is a strong connection between the requirement and the goal of consumer protection.⁵³ We find that the record before us presents a particularly strong connection between the accuracy requirements and consumer protection.

15. As an initial matter, we note that a critical component of the consumer protection goal is the protection of public safety. Congress has expressly directed the Commission to consider public safety needs when exercising its regulatory authority, encouraging it to "make available ... radio communication service[s] ... for the purpose of promoting safety of life and property," and to "promote the safety of life and property" when managing the private land mobile services spectrum generally.⁵⁴ The second prong, in the E911 context, therefore involves an inquiry into whether the accuracy requirement has a strong connection with the promotion of public safety. This basic point does not appear to be disputed by the Coalition.⁵⁵

16. We find that the record does demonstrate a strong connection between the accuracy standards and the promotion of public safety. The E911 requirements were expressly imposed in

⁴⁹ *Id.* at 507-08.

⁵⁰ *Id.* at 507 (citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).

⁵¹ Because we deny the petition, we need not decide whether the twelve members of the Tier III Coalition have standing to seek relief on behalf of the class of all Tier III carriers. *See also supra*, note 5.

⁵² Because we conclude that the Coalition's request fails the second and third prongs of section 10(a), we need not address the first prong, whether the accuracy standards are necessary to ensure, *inter alia*, that the carrier's rates are just and reasonable. 47 U.S.C. § 160(a)(1). We note briefly, however, that the Coalition's argument that enforcement of the accuracy requirements will require carriers to impose unreasonably high rates in order to recoup the costs of implementation is speculative. *See* Forbearance Petition at 40. As discussed below, speculation is not an adequate basis for forbearance. *See infra*, para. 22.

⁵³ *See CTIA*, 330 F.3d at 512.

⁵⁴ 47 U.S.C. §§ 151, 332(a). *See also Keller Communications, Inc. v. FCC*, 130 F.3d 1073, 1077 (D.C. Cir. 1997) (*Keller*).

⁵⁵ *See, e.g.*, Forbearance Petition at 40-41 (arguing that the second prong is satisfied in part because enforcement of accuracy will make rural consumers "less safe and diminish protection of their lives and property").

furtherance of the Congressional mandate to promote the safety of life and property.⁵⁶ The Commission has also noted the strong connection between the accuracy standards specifically and the goal of public safety. The Commission has previously stated that the “life-saving advantage of being able to know accurately and quickly the location of an emergency is obvious.”⁵⁷ It noted that emergency teams cannot assist a person they cannot find, and more accurate location information reduces the area that must be searched to locate an emergency situation while also making the selective routing of calls to PSAPs more accurate and reliable.⁵⁸ The Commission found that this provides a benefit to both the caller and to emergency service providers, enabling both a more rapid and more efficient use of emergency resources to aid parties in urgent need.⁵⁹ The record thus provides the requisite connection between the accuracy standards and the protection of consumers.

17. Petitioner offers two main arguments in support of its contention that enforcement of the accuracy standards is unnecessary to consumer protection. Its first argument is that the record is devoid of any evidence that the same accuracy standards imposed in urban areas are necessary in rural areas, or that shortfalls in meeting the accuracy standards in rural areas would result in any actual degradation in public safety.⁶⁰ Petitioner’s second argument is that no commercially-available Phase II-compliant system exists that can (a) be economically deployed in a rural service area and (b) satisfy the accuracy standards throughout that area.⁶¹

18. Petitioner asserts that a less demanding accuracy standard is sufficient in rural areas. It claims that “locating a stranded subscriber to within 1000 feet in an open rural setting may prove every bit as effective in actually locating the subscriber”⁶² We find, however, that the record supports the conclusion that accurate location information is as important in rural areas as it is in urban areas. For example, the Commission has previously found that the problem of auto accident fatalities due to delays in discovering the accident is even more serious in rural areas than urban areas:

Addressing this problem is especially important for rural areas. According to National Highway Traffic Safety Administration data, for example, *emergency communications are most valuable, and improvements are most needed, in rural areas*. In 1996, motor vehicle crashes in rural areas accounted for 59 percent of total motor vehicle fatalities that year, 25,000. The fatality rate is also twice as high on rural interstate highways as on urban ones per miles driven, and rural crashes are more severe, more likely to involve both multiple fatalities and severe vehicle damage. Overall, a person is as much as three times as likely to suffer a fatality in a rural crash.⁶³

In addition, the Commission has taken note of data from the United States Department of Transportation demonstrating that the average response time after a crash notification is almost twice as long in rural areas as it is in urban areas. Thus, the delay in discovering victims in an emergency is statistically greatest in rural areas, and the need for accurate location information to minimize such delay is all the

⁵⁶ See *E911 First Report and Order*, 11 FCC Rcd at 18681, paras. 8-9.

⁵⁷ *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Third Report and Order, 14 FCC Rcd 17388, 17389, para. 2 (1999) (*E911 Third Report and Order*).

⁵⁸ *E911 Third Report and Order*, 14 FCC Rcd at 17422, para. 74.

⁵⁹ *Id.* at 17389, 17403, 17422, paras. 2, 29, 74.

⁶⁰ See Forbearance Petition at i, 9; Tier III Coalition Reply Comments at 16.

⁶¹ Forbearance Petition at i.

⁶² *Id.* at 9.

⁶³ *E911 Third Report and Order*, 14 FCC Rcd at 17391, para. 4 (emphasis added).

more important.⁶⁴

19. Petitioner also claims that the generally open country of rural areas should enable location with greater ease and less accuracy than needed among the dense developments and underground facilities found in urban areas.⁶⁵ As the Public Safety Organizations observe, however, local characteristics that make location difficult occur in rural areas as well as urban areas.⁶⁶ The Public Safety Organizations note, for example, that rural customers might need emergency aid in dense woods, mountains or open prairies, or during obscuring weather conditions such as a hard rain or snow.⁶⁷ In addition, they reasonably assert that emergencies at night cause particular problems in remote rural areas, which are presumably less well lit at nighttime than urban streets.⁶⁸

20. Petitioner and some commenters also offer anecdotal evidence that rural emergencies have been located on the basis of information less precise than the accuracy standards required by the Commission.⁶⁹ We find that this anecdotal showing is insufficient to overcome the Commission's previous conclusion that the accuracy and reliability standards, which were set after consideration of a number of technological and geographic factors, are necessary to promote the public safety to the greatest extent reasonably possible.⁷⁰ Indeed, even the Petitioner's assertion that parties may be locatable with somewhat less accuracy in a rural area has already been considered and taken into account by the Commission in setting the existing accuracy standards.⁷¹ Further, even the anecdotal cases cited do not present clear instances where enforcement of the accuracy standards would not provide an important contribution to public safety. The cases indicate only that PSAPs were able to locate callers with less accurate information.⁷² They do not refute the conclusion that less accuracy, if not preventing location, often contributes to greater delay in location.⁷³ Delay, the Commission has noted, is itself a serious health hazard, as "[n]early 70 percent of auto accident fatalities occur within two hours after a crash and, according to a conservative estimate, 1,200 lives are lost each year because of delay in discovering accidents."⁷⁴ The Commission's findings on this point are more than sufficient under *CTIA* to overcome

⁶⁴ *Id.* at 17390 n.4.

⁶⁵ Forbearance Petition at 40.

⁶⁶ Public Safety Organizations Comments at 4.

⁶⁷ *Id.* at 4 n.7.

⁶⁸ *Id.*

⁶⁹ See, e.g., Tier III Coalition Reply Comments at 16 n.37.

⁷⁰ *E911 Third Report and Order*, 14 FCC Rcd at 17425, para. 82.

⁷¹ See *id.*, para. 72 ("[The 300 meter level of accuracy] recognizes that network-based solutions may not always be able to provide the higher level of accuracy, especially in rural areas. [This level] of accuracy should nonetheless provide a very useful indication of location, particularly in those rural areas."). While Petitioner takes note of this observation by the Commission, Forbearance Petition at 40, Petitioner erroneously argues that it reflects a view by the Commission that 300 meters (or more) is generally sufficient accuracy in rural areas to protect the public safety. Forbearance Petition at 40-41. Petitioner's argument ignores the fact that, even in rural areas, carriers using network-based ALI are required to achieve an accuracy of 100 meters for 67 percent of callers. *E911 Third Report and Order*, 14 FCC Rcd at 17394, para. 12. Permitting a 300-meter level of accuracy for a small percentage of callers reflected, as noted above, a careful consideration and weighing of many factors, including the impact of the lesser accuracy on rural consumers and the ability of carriers to meet the higher accuracy levels, in order to achieve the greatest degree of public safety reasonably possible, in rural as well as urban areas. Therefore, we reject Petitioner's assertion that we have accepted the view that less accuracy is generally adequate in rural areas.

⁷² See, e.g., Corr Comments at 4-5.

⁷³ *E911 Third Report and Order*, 14 FCC Rcd at 17390, para. 3.

⁷⁴ *Id.* at 17390, para. 4.

Petitioner's arguments. In sum, we find Petitioner's first argument unpersuasive.

21. Petitioner's second argument is that the current commercially-available technologies cannot produce the accuracy required by the rules throughout the rural carrier's entire service area without severe financial hardship. Petitioner suggests that meeting the accuracy standards would require a cost so great that rural carriers will have to terminate service in areas or pass on charges to their customers that drive these customers to other wireless services that have no E911 component at all, such as pagers.⁷⁵ While the Petitioner and some supporting commenters have again supplied anecdotal evidence in support of the Petitioner's assertions, we find that such evidence does not support the request for forbearance for the Tier III class. There has been no showing that the majority of wireless consumers in rural areas would lose service or be subject to excessive charges if the Commission's accuracy requirements were enforced.

22. Petitioner asserts, for example, that rural carriers using a network-based technology will need to add a large number of new cell sites in order to obtain accurate ALI because rural cell sites tend to be spaced farther apart and in a linear fashion, making accurate location identification through triangulation more difficult. It is likely, however, that the number of additional sites needed will vary between carriers, as will the number of customers over which the cost of the sites can be spread. Further, a carrier unable to construct the full number of sites necessary to meet the accuracy standards might still implement a smaller number of new sites to come as close as reasonably possible to meeting the standards. As the Public Safety Organizations suggest, there may also be the possibility of cooperation between adjacent rural carriers to help minimize cost of new cell site buildout.⁷⁶ For some carriers in this situation, transition to a handset technology might also be a feasible and effective solution. The Petitioner's broad speculation of financial infeasibility is thus insufficient to justify the class-wide forbearance requested.

23. Broad relief is particularly disfavored here because of the public safety importance of the E911 accuracy standards at issue. Under the Act, we are directed to take the special importance of public safety into account when implementing wireless regulation.⁷⁷ Thus, we have established that, because of the vital public safety benefits of E911, relief from E911 requirements will be considered on a case-by-case basis and that specific evidence is necessary to justify an individual carrier's request for relief. In the first Order in this proceeding, the Commission stated that, while "there may be exceptional circumstances where deployment of E911 may not be technically or economically feasible, . . . these cases can be dealt with through individual waivers" and "this need not delay adoption of the general rule . . ."⁷⁸ In the *E911 Fourth Memorandum Opinion and Order*, the Commission stated that, in light of the vital public safety benefits of E911, "broad generalized waivers should not be necessary and will not be granted."⁷⁹ In the *Non-Nationwide Carriers Order*, the Commission made the same point with regard to relief from the accuracy requirements specifically, stating: "To the extent that other carriers that filed for accuracy relief are unable to meet the accuracy standards in the future, we expect to determine whether relief is warranted on a case-by-case basis, once the carriers have filed concrete, specific plans to address the accuracy standards and have presented their testing data and other evidence to demonstrate their inability

⁷⁵ Forbearance Petition at 16.

⁷⁶ Public Safety Organizations Comments at 6-7.

⁷⁷ See *Keller*, 130 F.3d at 1077.

⁷⁸ See *E911 First Report and Order*, 11 FCC Rcd at 18718, para. 84.

⁷⁹ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58, para. 44 (2000) (*E911 Fourth Memorandum Opinion and Order*).

to meet the accuracy requirements.”⁸⁰ Most recently, the Commission provided guidance as to what specific evidence would be required to support several particular claims.⁸¹

24. Petitioner argues that its request is subject to a lower burden of proof because Petitioner seeks forbearance rather than a waiver.⁸² The standards for granting relief in the forbearance context do differ from those applicable to the waiver context.⁸³ We would not, however, characterize a forbearance petitioner’s burden as lower, and we reject the assertion that pursuing relief through the vehicle of forbearance relieves the Petitioner from the obligation to provide evidence demonstrating with specificity why each carrier should receive relief under the applicable substantive standards. The importance of the public safety benefits of E911 demands that we apply a high degree of scrutiny to any request for relief from an E911 requirement regardless of the vehicle of the request. We reaffirm that generalized assertions of need are unlikely to outweigh the public safety concerns that led to the creation of the accuracy standards.⁸⁴ The case-by-case review that we have established ensures that implementation of E911 will be delayed only where it is truly necessary, and that any relaxation of our requirements will be narrowly tailored. In short, this approach promotes our overall goal of achieving the ubiquitous implementation of E911 in as rapid a manner as reasonably possible.

25. Petitioners have sought broad relief supported only on anecdotal evidence that cannot sustain their burden of demonstrating that the accuracy standards are unnecessary for the protection of the consumers who would be affected by the relief sought. There is insufficient evidence in the record to support any such general class-wide relief. We therefore find that the Tier III Coalition has failed to refute the Commission’s conclusion that the accuracy standards will provide important safety benefits to rural wireless consumers. Further, we conclude that the Tier III Coalition has not demonstrated that E911 accuracy and reliability standards are unnecessary to protect these consumers under section 10(a) of the Act.

B. Public Interest

26. The Commission has repeatedly noted the important public interest in rapid deployment of E911 service. Chiefly, this is based on the clear public interest in receiving the protection and improved safety that E911 Phase II service will provide to wireless services customers in every region of the country and to the efficiency and effectiveness of the public safety responders who serve them. Thus, in the *E911 First Report and Order*, the Commission concluded that “[i]n view of the Nation’s important public safety needs, we find a compelling public interest in taking steps to ensure that E911 system performance keeps pace with the latest technologies.”⁸⁵ Again, in the *Non-Nationwide Carriers Order*, we emphasized the “acute public interest” in the “impact [of the E911 proceeding] on the national public

⁸⁰ *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853, para. 41; see also *id.* at 14842, para. 6 (noting that, under the *E911 Fourth Report and Order*, requests for waiver of E911 requirements “may be justified based on specific showings”).

⁸¹ *Order to Stay* at paras. 24-29.

⁸² Forbearance Petition at 11 (“The legal hurdle faced by the forbearance petitioner under Section 10 is, therefore, considerably lower than that faced by the waiver petitioner . . .”).

⁸³ Compare *CTIA*, 330 F.3d at 509, 512 (discussing standards for granting forbearance) with *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (discussing standards for granting a waiver).

⁸⁴ See, e.g., *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17457, 17458, para. 44 (“Waivers thus should not generally be warranted, especially in light of the vital public safety benefits of Phase II. In those particular cases where waivers may be justified, however, broad, generalized waivers should not be necessary and will not be granted.”).

⁸⁵ *First Report and Order*, 11 FCC Rcd at 18684, para. 13.

safety.”⁸⁶ The Commission has not held that any delay in the implementation of E911 is always contrary to the public interest, but it has found that such delays will “not generally be warranted” and require extraordinary justification “in view of the countervailing public interest that weighs so heavily against implementation delay.”⁸⁷ In short, while the public interest is a broader concept than public safety, the latter is a particularly important factor in the public interest calculus. Thus, for relief to be justified, carriers must demonstrate with specific evidence that the detriment to the public interest caused by delays in the implementation of accurate E911 service is justified by other compelling factors.

27. For the reasons discussed in connection with the consumer protection prong, we find that Petitioner has not demonstrated that there are compelling reasons in the public interest to relieve all Tier III carriers from their obligation to provide accurate Phase II service.⁸⁸ In addition to its arguments regarding the need for accuracy and the costs and difficulty of rural E911 implementation, Petitioner argues that forbearance is in the public interest because “forbearing from . . . enforcement will encourage competition in the relevant service markets.”⁸⁹ The Act does specifically provide that “[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination *may be* the basis for a Commission finding that forbearance is in the public interest.”⁹⁰ However, the Act does not *require* a finding of public interest based on the consideration of competition. In this case, the Commission does not have sufficient evidence on the record to conclude what effect forbearance would have on competition in rural markets.⁹¹ The speculative effect of forbearance on competition is not a sufficiently important factor in determining the public interest when compared with the public safety benefits of accurate ALI. Thus, we find this line of argument unproven by Petitioners for a variety of reasons. However, even assuming *arguendo* that forbearance would, in isolated instances, promote competition, rather than impede it, Petitioners have nevertheless failed to show that the public interest prong of the forbearance test is satisfied. The Commission’s long-standing and well-documented conclusion that rapid deployment of E911 is necessary to the public interest trumps any speculative evidence presented by Petitioners with regard to the competitive effects of forbearance in this context.

IV. CONCLUSION

28. We deny the Forbearance Petition because we find that the Coalition has failed to demonstrate that enforcement of the current accuracy standards is unnecessary for the protection of consumers or that forbearance would be consistent with the public interest. In rejecting the Coalition’s request for a broad, class-wide relief from the accuracy standards, we maintain our commitment to the deployment of Phase II service in all parts of this country in as rapid a manner as reasonably possible. We note that, under the terms of the October 10, 2003 *Order to Stay*, enforcement of section 20.18(h) was stayed as against the members of the Coalition for a period of six months from the release date of the

⁸⁶ *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14859, Appendix B, Discussion of Small Business Implications.

⁸⁷ *Order to Stay* at paras. 4, 13.

⁸⁸ Our arguments why the second prong is not satisfied are therefore incorporated by reference. In the interest of brevity, we do not repeat them here.

⁸⁹ Forbearance Petition at iii.

⁹⁰ 47 U.S.C. § 160(b) (emphasis added).

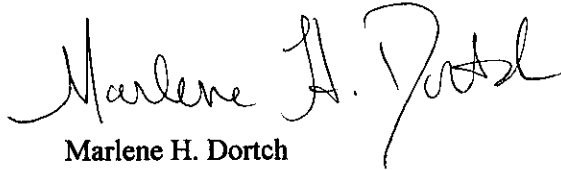
⁹¹ Petitioners argue that some rural wireless carriers may, unless granted forbearance relief, shut down a cell tower that cannot be brought within the Commission’s standards rather than risk any non-compliance with the Commission’s accuracy requirements. Assuming *arguendo* that these assertions are true, we nonetheless do not see sufficient basis in the record for concluding that such a situation would merit the relief sought. Rather, the Commission concludes that competition is best preserved by imposing requirements on all carriers even-handedly and resolving particularized showings of extreme hardship by individualized waiver relief.

order or the date on which the Forbearance Petition was decided.⁹² That stay is therefore now lifted, effective on the release date of this Order. Certain members of the Coalition have pending petitions for waiver of E911 requirements, and under the *Order to Stay*, these members have an independent stay of the requirements from which they seek waiver for a period of six months or until the waiver petition is decided, which is sooner. Thus, for these members, the stay pursuant to their petitions for waiver remains in force. We list in Appendix C those members who remain subject to a temporary stay and those who do not.

29. ACCORDINGLY, IT IS HEREBY ORDERED that, pursuant to sections 4(i) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 160, the Petition for Forbearance filed by the Tier III Coalition on September 20, 2002 is DENIED.

30. IT IS FURTHER ORDERED that the temporary stay on the E911 Phase II accuracy and reliability requirements set forth in section 20.18(h) of the Commission's rules, 47 C.F.R. § 20.18(h), imposed pursuant to paragraph 35 of the *Order to Stay* for the benefit of the members of the Tier III Coalition, is hereby lifted, effective on the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

⁹² *Order to Stay* at para. 31.

APPENDIX A**Members of the Tier III Coalition:**

1. Cal-One Cellular L.P.
2. California RSA #3 Limited Partnership, A California Limited Partnership d/b/a Golden State Cellular
3. El Dorado Cellular, A California Corporation d/b/a Mountain Cellular
4. Illinois Valley Cellular RSA 2- I Partnership d/b/a Illinois Valley Cellular
5. Illinois Valley Cellular RSA 2-II Partnership d/b/a Illinois Valley Cellular
6. Illinois Valley Cellular RSA 2-III Partnership d/b/a Illinois Valley Cellular
7. Iowa RSA No. 2 Limited Partnership d/b/a Lyrrix Wireless
8. Minnesota Southern Cellular Telephone Company d/b/a HickoryTech Wireless
9. Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular
10. Northwest Missouri Cellular Limited Partnership
11. Public Service Cellular, Inc.
12. RSA 1 Limited Partnership d/b/a Cellular 29 Plus

APPENDIX B**Parties Filing Comments:**

1. ACS Wireless, Inc. (ACS)
2. Cable & Communications Corporation d/b/a Mid-River Cellular (CSC)
3. Cellular Telecommunications & Internet Association (CTIA)
4. Corr Wireless Communications, LLC (Corr Wireless)
5. Dobson Communications Corporation (Dobson)
6. National Emergency Number Association (NENA); the Association of Public Safety Communications Officials-International, Inc. (APCO), and the National Association of State Nine One One Administrators (NASNA)
7. National Telecommunications Cooperative Association (NTCA)
8. On-Board Communications (On-Board)
9. Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
10. PetroCom License Corporation (Petro Com)
11. Rural Cellular Association (RCA)
12. Rural Cellular Corporation (RCC)
13. Rural Telecommunications Group (RTG)
14. Southern Illinois RSA Partnership, et. al. (S.Ill.)
15. Verizon Wireless (VW)

Parties Filing Reply Comments:

1. Tier III Coalition for Wireless E911 (Tier III Coalition or Petitioners)

APPENDIX C**Coalition Members No Longer Subject to Stay:**

1. Cal-One Cellular L.P.
2. California RSA #3 Limited Partnership, A California Corporation d/b/a Mountain Cellular
3. El Dorado Cellular, A California Corporation d/b/a Mountain Cellular
4. Illinois Valley Cellular RSA 2-I Partnership d/b/a Illinois Valley Cellular
5. Illinois Valley Cellular RSA 2-II Partnership d/b/a Illinois Valley Cellular
6. Illinois Valley Cellular RSA 2-III Partnership d/b/a Illinois Valley Cellular

Coalition Members Still Subject to Stay:

1. Iowa RSA No. 2 Limited Partnership d/b/a Lyrix Wireless
2. Minnesota Southern Cellular Telephone Company d/b/a Hickory Tech Wireless
3. Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular
4. Northwest Missouri Cellular Limited Partnership
5. Public Service Cellular, Inc.
6. RSA 1 Limited Partnership d/b/a Cellular 29 Plus